

DECISION



W. W. H. H.
119121

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-205881

DATE: August 3, 1982

MATTER OF:

Lake Shore, Inc.

DIGEST:

1. Protest that subcontractor, procuring for the Government, accepted a proposal that did not meet an RFP requirement is denied where the record shows that the award in fact was based on an offer that conformed to the agency's stated requirements.
2. Where the RFP did not require offerors to demonstrate their ability to meet RFP requirements for performance characteristics and certain brand name components, protest that the awardee's offer failed to do so does not provide a basis for objection to award. Question of whether an offeror can meet the requirements involves a matter of responsibility, which GAO will not review except in circumstances not present here.

Lake Shore, Inc. protests a contract award to Westmont Industries under request for proposals (RFP) Inquiry No. 13100-11696-0728 issued by Stone & Webster Engineering Corporation for the Department of Energy (DOE). The contract entails the design, manufacture and delivery of a crane system for a DOE gas centrifuge enrichment plant in Piketon, Ohio that Stone & Webster is constructing. Lake Shore alleges that Westmont's proposal failed to conform to the RFP's requirement for rotating hoists. Lake Shore also raises several other protest grounds which basically involve allegations that Westmont's proposal did not demonstrate its compliance with specific RFP requirements for certain brand name components and certain performance characteristics.

We deny the protest in part and dismiss it in part.

At the outset, we point out that the Federal Procurement Regulations do not apply per se to this procurement. Rather, Stone & Webster, acting for the Government, is required to conduct its procurements according to the terms of its contract with DOE and its own procedures, approved by the agency, and to conform to certain fundamental principles of Federal procurement known as the Federal norm. See Centennial Computer Products, Inc., B-200605, June 24, 1981, 81-1 CPD 526.

The protester alleges that instead of proposing rotating crane masts with independently rotating hoists as required by the RFP, Westmont proposed rotating masts with rotating hooks. The hoist is the lifting apparatus whereas the hook merely is the grappling device at the end of the cable.

Stone & Webster had Bechtel National, Inc. evaluate the technical aspects of the proposals. Bechtel National noted that Westmont's initial proposal offered the rotating hook design, which was not acceptable, but that a subsequent submission by Westmont might be construed as an agreement to furnish rotating hoists. Westmont stated in the initial proposal that "Rotating hook design [is] substituted for rotating hoist * * *," and furnished descriptive literature explaining the rotating hook design. The subsequent submission cited by Bechtel National acknowledged a revised drawing involving the required rotating hoists. The acknowledgment stated, "Review of the * * * revisions indicates no change in Westmont Industries' [initial] proposal * * *." Thus, Westmont's acknowledgment of the RFP requirement for rotating hoists appeared to confirm the initial offer of rotating hooks.

Lake Shore bases its protest that Stone & Webster improperly accepted an offer for rotating hook cranes essentially on the acknowledgment's reference to Westmont's initial proposal. In a letter to Stone

& Webster sent prior Westmont's acknowledgment of the rotating hoist amendment, however, Westmont indicated it would comply with the rotating hoist requirement although it still offered its rotating hook design for consideration. In view of that letter, both DOE and Westmont assert that the award in fact was for cranes with rotating hoists.

To the extent that Westmont's proposal may have been ambiguous on its face as to whether the firm was offering the required rotating hoists or the unacceptable rotating hooks, Stone & Webster could have clarified the matter after receipt of Westmont's acknowledgment of the amendment. See Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15. The record, however, shows that the contracting parties, based on Westmont's letter that it would comply with the rotating hoist requirement, intended that the award would obligate the contractor to furnish cranes with rotating hoists. DOE advises that Westmont indeed is delivering cranes with rotating hoists at the contract price of \$8,664,000. (Lake Shore's offer was \$16,475,000.)

Thus, DOE is receiving cranes from Westmont that meet the requirement in issue, and for nearly \$8 million less than Lake Shore's offer. The protest that the award was on a basis other than that set out in the RFP therefore is denied.

Regarding Lake Shore's complaint that Westmont's proposal failed to demonstrate compliance with certain RFP performance characteristics and brand name requirements, the RFP did not require that an offer demonstrate such compliance. Instead, the RFP stated:

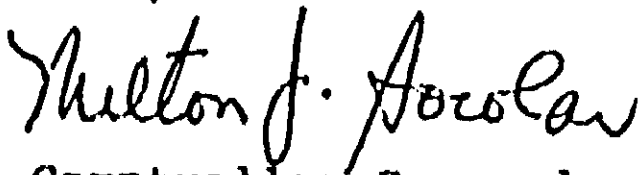
"IMPORTANT NOTE: If no exceptions are stated in the proposal, the Purchaser will consider that the proposal is offered in strict accordance with the Purchaser's Solicitation Documents."

Therefore, Westmont's alleged failure to demonstrate compliance with RFP requirements provides no valid basis to reject its proposal.

The issue of whether Westmont is capable of meeting the requirements does, however, involve the firm's responsibility. Before making award, Stone & Webster had to find Westmont responsible; we do not review protests against affirmative determinations of responsibility unless the protester shows fraud on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. The Nedlog Company, B-203263, July 7, 1981, 81-2 CPD 17.

Lake Shore also questions Westmont's ability to perform the contract at its low price. This too involves a matter of responsibility, which we will not review absent the circumstances listed above. See Gupta Carpet Professionals, Inc., B-204260, August 24, 1981, 81-2 CPD 172.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States